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JUN - 4 1997

Federal Communications Commission
Office of Secretary

June 4, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *GC Docket No. 95-21, Amendment of 47 CFR Section 1.1200 et seq.
Concerning Ex parte Presentations in Commission Proceedings*

On behalf of SBC Communications, please find enclosed an original and six copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 383-6424 should you have any questions or require additional information concerning this matter.

Sincerely,

Sherry Hervey (SBC)

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of 47 CFR Section 1.1200 et seq.
Concerning *Ex parte* Presentations in
Commission Proceedings

GC Docket No. 95-21

COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") comments in support of the Petition for Reconsideration by Hogan & Hartson L.L.P. that urges the Commission to designate "permit-but-disclose" treatment as the default category for *ex parte* communications and to limit "restricted" treatment to specified quasi-judicial proceedings.¹

The Commission's *NPRM* proposed to treat as restricted proceedings only those required to be restricted by the Administrative Procedures Act ("APA") and those specified as restricted by the Commission on a case-by-case basis. The permit-

¹ Petition for Reconsideration of Hogan & Hartson L.L.P., May 2, 1997.

but-disclose category would be the "catch-all" or default category.² SBC supported this proposed treatment in its comments.³ Without explanation, however, the *Report and Order* rejects that proposal and instead, designates the restricted category as the "catch all".⁴

The *Report and Order*, however, explains the Commission's departure from its initial proposal in the *NPRM* to treat informal (non-hearing) adjudications as restricted (instead of permit-but-disclose) because commenters' objected to the broad use of permit-but-disclose procedures related to adjudications. We do not object to this change. However, to the extent those comments influenced the Commission's decision to treat permit-but-disclose as the catch-all, they should be rejected. There is no reason for the *ex parte* status of informal adjudications to affect the Commission's choice of the catch-all category.

The Commission's initial proposal for permit-but-disclose as the catch-all was based on sound considerations of fairness as well as its interest in encouraging the free flow of information. Nothing in the record suggests a basis for changing that proposal. By adopting permit-but-disclose as the catch-all, the Commission will promote open communications (subject to the protection of parties'

² Amendment of 47 C.F.R. §1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-61, *Notice of Proposed Rulemaking*, 10 FCC Rcd 3240, 3242(1995) ("*NPRM*"); *Report and Order*, FCC 97-92, released March 19, 1997 ("*Report and Order*").

³ Comments of SBC Communications Inc., April 13, 1995, pp. 1-2; Comments of Pacific Bell and Nevada Bell, April 13, 1995, p. 2.

⁴ *Report and Order*, paras. 12, 13.

rights by the public disclosure of communications) and restrict public communication only when necessary to protect parties' rights. On the other hand, designating the restricted category as the catch-all leads to the opposite perception -- that the Commission does not have a strong interest in obtaining information from the public and that specific permission is required before one can make an *ex parte* communication to the Commission. The Commission should reverse the rule that leads to this misperception of its interests.

Permit-but-disclose as the catch-all also supports the idea that the Commission imposes restrictions only when necessary to serve a compelling public interest consideration. *NPRM*, para. 14. It is also consistent with the overall success of the new rules in meeting the Commission's goals in this proceeding: the new rules are much simpler and eliminate confusion about which proceedings are subject to *ex parte* limitations. The public will be able to anticipate the *ex parte* status of a proceeding as easily as if the catch-all treatment were to restrict *ex parte* communications. *NPRM*, para. 9.

The Commission will not need to undertake additional effort in order to establish permit-but-disclose as the catch-all treatment. A listing of restricted proceedings can easily be assembled from the *Report and Order*, which discusses proceedings such as waiver requests, Title III applications, and formal complaints as restricted. The Commission could also maintain the existing list of permit-but-disclose proceedings but adopt a rule that establishes permit-but-disclose treatment as the catch-all for proceedings not designated as exempt or restricted.

Finally, the newly strengthened disclosure requirements (which apply to permit-but-disclose *ex parte* communications) reinforce the importance of fair play and due process in Commission proceedings. On the other hand, if permit-but-disclose treatment is inappropriate, the Commission retains the ability to designate the proceeding as restricted and in that way, protect the interests of the parties.

For the reasons above, SBC urges the Commission to reconsider and establish the permit-but-disclose category as the catch-all treatment for *ex parte* communications.

Respectfully submitted,

SBC COMMUNICATIONS INC.

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Date: June 4, 1997